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Attorneys for Plaintiffs on behalf of themselves and all others similarly situated ad specifically referenced herein,

**UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
 (OAKLAND DIVISION)**

GABE BEAUPERTHUY, MICHAEL CHALMER,
 ALEXIS COVARRUBIAS, JOHN DAVIDSSON,
 LINDSAY D'ERRICO, BOBBY DESOTO, JASON A.
 DIGENNARO, LAWRENCE O'NEILL DICKERSON,
 ANNE DILLON, NATHANIEL FENNELL, KELLY
 FENNELLY, ANTOINETTE FIEDLER, COREY
 FOBES, PATRICK A. FREY, HEIDI GABALSKI,
 DAVID L. GUY, NATHANIEL HOELK, GARRETT
 HOPKINS, GOREAL HUDSON, DAVID KAIPI,
 QUIN KAPLAN, SEAN W. LEE, BRIAN
 HARRINGTON LEWIS, KRISTOPHER MICHAEL
 MARTINO, MARCEL MATTHEWS, DANUAL
 MEYERS, JUDE M. MONTOYA, JAMES EDWARD
 MOREY, JOHN NESMITH, ANDREW W.
 NEWCOMB, BRANDON F. NEIL, JAMES L.
 OGDEN, STEVE ORRICO, ANNIE OSTOLASA,
 RYAN PARKER, TIMOTHY F. PAUDLER, KYLE
 PHILLIPS, MATTHEW POPELKA, SABRINA
 PRIESMAN, WILLIAM E. RAINALDO, JR.,
 ALFRED RA'OOOF, JAMES REED, DANIELLE
 RELPH, MATTHEW REITER, ANTHONY ROMEO,
 CHAD V. RUF, ADAM SHERRILL, MARK
 SLOMKA, EVAN SOOPER, KIMBERLY S.
 STRUBLE, REBECCA L. TOBIN, JOHN UDDEN,
 JASON VALLEY, ADAM L. VEST, CHRISTOPHER
 VINCENT, MARK WHITE, DAVID WOOD,
 JOSHUA WOODSON. on behalf of themselves and all
 others similarly situated specifically referenced herein,
 Plaintiffs,

vs.

24 HOUR FITNESS USA, INC., a California
 corporation dba 24 HOUR FITNESS; SPORT AND
 FITNESS CLUBS OF AMERICA, INC., a California
 corporation dba 24 HOUR FITNESS,
 Defendants

E-Filing

C 06 0715

Case No.
 Judge:

COMPLAINT

SC

**1. COLLECTIVE ACTION
 FOR CLAIMS UNDER FAIR
 LABOR STANDARDS ACT [29
 U.S.C. § 201 *et seq.*]**

2. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 On behalf of themselves and all others similarly situated as specifically referenced herein,
2 Plaintiffs allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
5 1343(3) as the controversy arises under the laws of the United States. Specifically, the claim arises
6 under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.* ("FLSA").

7 2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §1391(c), because
8 Defendant 24 HOUR FITNESS, USA, INC. is a California Corporation with its principal base of
9 business in San Ramon, California; Defendant SPORT AND FITNESS CLUBS OF AMERICA,
10 INC., is an Ohio corporation licensed to do business in California as 24 Hour Fitness with its principal
11 base of business in San Ramon, California.

12 **INTRADISTRICT ASSIGNMENT**

13 3. Assignment to the Oakland Division is proper because Defendants 24 HOUR FITNESS, USA,
14 INC., and SPORT AND FITNESS CLUBS OF AMERICA, INC. (collectively "24 HOUR
15 FITNESS") both have registered with the California Secretary of State that their principal place of
16 business in California is in San Ramon, located in Contra Costa County.

17 **GENERAL ALLEGATIONS**

18 4. Plaintiffs are, or formerly were, General Managers, Fitness Managers, Operations Managers,
19 Assistant General Managers, Assistant Fitness Managers, Assistant Operations Managers (collectively
20 "Managers"), Sales Counselors, Personal Trainers and Group X Instructors (collectively "Trainers")
21 who have worked unpaid overtime hours for Defendants 24 HOUR FITNESS, USA, INC. and
22 SPORT AND FITNESS CLUBS OF AMERICA, INC. (collectively "24 HOUR FITNESS"), in the
23 operation and maintenance of 24 HOUR FITNESS's health clubs.

24 5. Plaintiffs have worked for 24 HOUR FITNESS. Plaintiffs are informed and believe that 24
25 HOUR FITNESS owns and operates health clubs in Arizona, California, Colorado, Florida, Hawaii,
26 Idaho, Kansas, Missouri, Montana, Nebraska, Nevada, Oregon, Tennessee, Texas, Utah and
27 Washington.

28 6. Plaintiffs GABE BEAUPERTHUY, MICHAEL CHALMERS, ALEXIS COVARRUBIAS,

1 JOHN DAVIDSSON, LINDSAY D'ERRICO, BOBBY DESOTO, JASON A. DIGENNARO,
 2 LAWRENCE O'NEILL DICKERSON, ANNE DILLON, NATHANIEL FENNELL, KELLY
 3 FENNELLY, ANTOINETTE FIEDLER, COREY FOBES, PATRICK A. FREY, HEIDI
 4 GABALSKI, DAVID L. GUY, NATHANIEL HOELK, GARRETT HOPKINS, GOREAL
 5 HUDSON, DAVID KAIPI, QUIN KAPLAN, SEAN W. LEE, BRIAN HARRINGTON LEWIS,
 6 KRISTOPHER MICHAEL MARTINO, MARCEL MATTHEWS, DANUAL MEYERS, JUDE M.
 7 MONTOYA, JAMES EDWARD MOREY, JOHN NESMITH, ANDREW W. NEWCOMB,
 8 BRANDON F. NEIL, JAMES L. OGDEN, STEVE ORRICO, ANNIE OSTOLASA, RYAN
 9 PARKER, TIMOTHY F. PAUDLER, KYLE PHILLIPS, MATTHEW POPELKA, SABRINA
 10 PRIESMAN, WILLIAM E. RAINALDO, JR, ALFRED RA'OOF, JAMES REED, DANIELLE
 11 RELPH, MATTHEW REITER, ANTHONY ROMEO, CHAD V. RUF, ADAM SHERRILL, MARK
 12 SLOMKA, EVAN SOOPER, KIMBERLY S. STRUBLE, REBECCA L. TOBIN, JOHN UDDEN,
 13 JASON VALLEY, ADAM L. VEST, CHRISTOPHER VINCENT, MARK WHITE, DAVID WOOD,
 14 JOSHUA WOODSON (collectively "Plaintiffs") bring these claims individually and as a collective
 15 action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of Managers, Sales
 16 Counselors and Trainers, none of which positions are exempt from the overtime provisions of the
 17 FLSA ("FLSA Collective Members").

18 7. Plaintiffs allege on behalf of themselves and all similarly situated Managers, Sales Counselors,
 19 and Trainers, that 24 HOUR FITNESS unlawfully classified as exempt from overtime payments under
 20 federal and state laws and/or failed and refused to pay overtime premiums to Plaintiffs and the
 21 proposed FLSA Collective Members for all overtime worked, notwithstanding that Plaintiffs and
 22 proposed the FLSA Collective Members are not and were not exempt and are and have been entitled
 23 to overtime pay, for overtime worked, and further, that 24 HOUR FITNESS failed to record and
 24 maintain time records of hours worked by Managers, Sales Counselors and Trainers as required by
 25 law.

26 8. 24 HOUR FITNESS's practices violated and continue to violate the FLSA, 29 U.S.C. §§201,
 27 *et seq.* The collective action claims are for overtime compensation, liquidated damages and/or
 28 interest, and attorneys' fees and costs, under the FLSA, 29 U.S.C. §207 and 216(b).

1 9. 24 HOUR FITNESS's acts were in accordance with, and represent the official policies of 24
2 HOUR FITNESS, or those whose edicts or acts may fairly be said to represent said official policies.

3 10. Each Defendant willfully committed, ordered, directed supervised, allowed, planned, ratified,
4 concealed, organized, or otherwise participated in the unlawful acts complained of herein.

5 **PARTIES**

6 **Plaintiffs**

7 11. Plaintiff GABE BEAUPERTHUY is a resident of Colorado Springs, Colorado, and was
8 employed by 24 Hour Fitness from on or about July, 1999 to the present, at a 24 Hour Fitness located
9 in the State of Colorado, as a General Manager. As a General Manager, GABE BEAUPERTHUY
10 regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to
11 receive all minimum wages, including all overtime compensation to which he was entitled for hours
12 worked in excess of forty (40) hours per week and/or eight (8) hours per day.

13 12. Plaintiff MICHAEL CHALMERS is a resident of Henderson, Nevada, and was employed by
14 24 Hour Fitness from on or about September, 2000 to on or about October, 2002, and on or about
15 September, 2003 to on or about July, 2004, at a 24 Hour Fitness located in the State of Nevada, as a
16 Sales Counselor. As a Sales Counselor, MICHAEL CHALMERS regularly worked in excess of forty
17 (40) hours per week and eight (8) hours per day, but failed to receive all minimum wages, including
18 all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
19 week and/or eight (8) hours per day.

20 13. Plaintiff ALEXIS COVARRUBIAS is a resident of Reno, Nevada, and was employed by 24
21 Hour Fitness from on or about July 31, 2003 to on or about January 11, 2005, at a 24 Hour Fitness
22 located in the State of Nevada, as a Sales Counselor, Senior Sales Counselor, Assistant General
23 Manager, and General Manager. As a Sales Counselor, Senior Sales Counselor, Assistant General
24 Manager and General Manager, ALEXIS COVARRUBIAS regularly worked in excess of forty (40)
25 hours per week and eight (8) hours per day, but failed to receive all minimum wages, including all
26 overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
27 week and/or eight (8) hours per day.

1 14. Plaintiff JOHN DAVIDSSON is a resident of Edmonds, Washington, and was employed by 24
2 Hour Fitness from on or about September, 2002 to on or about December, 2004, at a 24 Hour Fitness
3 located in the State of Washington, as a Personal Trainer and Fitness Manager. As a Personal Trainer
4 and Fitness Manager, JOHN DAVIDSSON regularly worked in excess of forty (40) hours per week
5 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
6 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
7 eight (8) hours per day.

8 15. Plaintiff LINDSAY D'ERRICO is a resident of Las Vegas, Nevada, and was employed by 24
9 Hour Fitness from on or about October, 2003 to on or about December, 2004, at a 24 Hour Fitness
10 located in the State of Nevada, at the front desk, as a Personal Trainer, and as Juice Bar Supervisor.
11 As a Personal Trainer and Juice Bar Supervisor, LINDSAY D'ERRICO regularly worked in excess of
12 forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum wages,
13 including all overtime compensation to which he was entitled for hours worked in excess of forty (40)
14 hours per week and/or eight (8) hours per day.

15 16. Plaintiff BOBBY DESOTO is a resident of Littleton, Colorado, and was employed by 24 Hour
16 Fitness from on or about October 16, 2004, to on or about January 31, 2005, at a 24 Hour Fitness
17 located in the State of Colorado, as a Sales Counselor, Assistant General Manager, General Manager,
18 and a Maintenance Technician. As a Sales Counselor, Assistant General Manager, General Manager,
19 and a Maintenance Technician, BOBBY DESOTO regularly worked in excess of forty (40) hours per
20 week and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
21 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
22 eight (8) hours per day.

23 17. Plaintiff JASON A. DIGENNARO is a resident of Bellingham, Washington, and was
24 employed by 24 Hour Fitness from on or about July, 2004 to on or about October, 2004, at a 24 Hour
25 Fitness located in the State of Washington, as a Personal Trainer. As a Personal Trainer, JASON A.
26 DIGENNARO regularly worked in excess of forty (40) hours per week and eight (8) hours per day,
27 but failed to receive all minimum wages, including all overtime compensation to which he was
28 entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

1 18. Plaintiff LAWRENCE O'NEILL DICKERSON is a resident of Las Vegas, Nevada, and was
2 employed by 24 Hour Fitness from on or about March 3, 2000 to on or about July 31, 2004, at a 24
3 Hour Fitness located in the State of Nevada, as an Operations Manager. As an Operations Manager,
4 LAWRENCE O'NEILL DICKERSON regularly worked in excess of forty (40) hours per week and
5 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
6 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
7 hours per day.

8 19. Plaintiff ANNE DILLON is a resident of Tacoma, Washington, and was employed by 24 Hour
9 Fitness from on or about February, 2001 to on or about April, 2003, at a 24 Hour Fitness located in the
10 State of Washington, as an Operations Manager. As an Operations Manager, ANNE DILLON
11 regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to
12 receive all minimum wages, including all overtime compensation to which he was entitled for hours
13 worked in excess of forty (40) hours per week and/or eight (8) hours per day.

14 20. Plaintiff NATHANIEL FENNELL is a resident of Everett, Washington, and was employed by
15 24 Hour Fitness from on or about July, 1999 to on or about July, 2003, at a 24 Hour Fitness located in
16 the State of Washington, as a Personal Trainer, Fitness Manager, General Manager, and Regional
17 Director of Fitness. As a Personal Trainer, Fitness Manager, General Manager, and Regional Director
18 of Fitness, NATHANIEL FENNELL regularly worked in excess of forty (40) hours per week and
19 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
20 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
21 hours per day.

22 21. Plaintiff KELLY FENNELLY is a resident of Bellevue, Washington, and was employed by 24
23 Hour Fitness from on or about November, 1998 to on or about January, 2005, at 24 Hour Fitness
24 locations in the States of Washington, Idaho and Oregon, as a Personal Trainer, Fitness Manager,
25 Operations Manager, and Group X Instructor. As a Personal Trainer, Fitness Manager, Operations
26 Manager, and Group X Instructor, KELLY FENNELLY regularly worked in excess of forty (40)
27 hours per week and eight (8) hours per day, but failed to receive all minimum wages, including all
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1 overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
2 week and/or eight (8) hours per day.

3 22. Plaintiff ANTOINETTE FIEDLER is a resident of Henderson, Nevada, and was employed by
4 24 Hour Fitness from on or about March 4, 1990 to the present, at 24 Hour Fitness locations in the
5 States of California and Nevada, as an Operations Manager, and Customer Relations Supervisor. As a
6 Operations Manager, and Customer Relations Supervisor, ANTOINETTE FIEDLER regularly
7 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
8 minimum wages, including all overtime compensation to which he was entitled for hours worked in
9 excess of forty (40) hours per week and/or eight (8) hours per day.

10 23. Plaintiff COREY FOBES is a resident of Raleigh, North Carolina, and was employed by 24
11 Hour Fitness from on or about March, 1999 to on or about November, 2003, at 24 Hour Fitness
12 locations in the States of Colorado, Kansas, Missouri, Nebraska and Tennessee, as a Personal Trainer,
13 Floor Supervisor, Fitness Manager, and District Fitness Manager. As a Personal Trainer, Floor
14 Supervisor, Fitness Manager, and District Fitness Manager, COREY FOBES regularly worked in
15 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
16 wages, including all overtime compensation to which he was entitled for hours worked in excess of
17 forty (40) hours per week and/or eight (8) hours per day.

18 24. Plaintiff PATRICK A. FREY is a resident of Medford, Oregon, and was employed by 24 Hour
19 Fitness from on or about March 29, 2000 to on or about November 30, 2003, at a 24 Hour Fitness
20 located in the State of Oregon, as a Personal Trainer. As a Personal Trainer, PATRICK A. FREY
21 regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to
22 receive all minimum wages, including all overtime compensation to which he was entitled for hours
23 worked in excess of forty (40) hours per week and/or eight (8) hours per day.

24 25. Plaintiff HEIDI GABALSKI is a resident of Golden, Colorado, and was employed by 24 Hour
25 Fitness from on or about March, 2001 to on or about January, 2003, at a 24 Hour Fitness located in the
26 State of Colorado, as a Personal Trainer. As a Personal Trainer, HEIDI GABALSKI regularly worked
27 in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
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1 wages, including all overtime compensation to which he was entitled for hours worked in excess of
2 forty (40) hours per week and/or eight (8) hours per day.

3 26. Plaintiff DAVID L. GUY is a resident of Thornton, Colorado, and was employed by 24 Hour
4 Fitness from on or about October, 2000 to on or about March, 2004, at a 24 Hour Fitness located in
5 the State of Colorado, as a Personal Trainer, Floor Supervisor, and Fitness Manager. As a Personal
6 Trainer, Floor Supervisor, and Fitness Manager, DAVID L. GUY regularly worked in excess of forty
7 (40) hours per week and eight (8) hours per day, but failed to receive all minimum wages, including
8 all overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
9 week and/or eight (8) hours per day.

10 27. Plaintiff NATHANIEL HOELK is a resident of Lakewood, Colorado, and was employed by
11 24 Hour Fitness from on or about August, 2000 to on or about December, 2004, at a 24 Hour Fitness
12 located in the State of Colorado, as a Personal Trainer, Floor Supervisor, and Fitness Manager. As a
13 Personal Trainer, Floor Supervisor, and Fitness Manager, NATHANIEL HOELK regularly worked in
14 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
15 wages, including all overtime compensation to which he was entitled for hours worked in excess of
16 forty (40) hours per week and/or eight (8) hours per day.

17 28. Plaintiff GARRETT HOPKINS is a resident of Shawnee, Kansas, and was employed by 24
18 Hour Fitness from on or about August 5, 2004 to the present at a 24 Hour Fitness located in the State
19 of Kansas, at the front desk and the juice bar, as a Sales Counselor, and Assistant General Manager.
20 As a Sales Counselor, and Assistant General Manager, GARRETT HOPKINS regularly worked in
21 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
22 wages, including all overtime compensation to which he was entitled for hours worked in excess of
23 forty (40) hours per week and/or eight (8) hours per day.

24 29. Plaintiff GOREAL HUDSON is a resident of Spanaway, Washington, and was employed by
25 24 Hour Fitness from on or about December, 2002 to on or about June, 2004, at a 24 Hour Fitness
26 located in the State of Washington as a Sales Counselor, Assistant General Manager, and General
27 Manager. As a Sales Counselor, Assistant General Manager, and General Manager, GOREAL
28 HUDSON regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but

1 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
2 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

3 **30.** Plaintiff DAVID KAIPI is a resident of Kirkland, Washington, and was employed by 24 Hour
4 Fitness from on or about January, 2000 to on or about August, 2004, at 24 Hour Fitness locations in
5 the States of Washington, Idaho and Montana, as a Personal Trainer, Fitness Manager, and District
6 Fitness Manager. As a Personal Trainer, Fitness Manager, and District Fitness Manager, DAVID
7 KAIPI regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed
8 to receive all minimum wages, including all overtime compensation to which he was entitled for hours
9 worked in excess of forty (40) hours per week and/or eight (8) hours per day.

10 **31.** Plaintiff QUIN KAPLAN is a resident of Lafayette, Colorado, and was employed by 24 Hour
11 Fitness from on or about January 23, 2000 to the present, at a 24 Hour Fitness located in the State of
12 Colorado, as an Operations Manager. As an Operations Manager, QUIN KAPLAN regularly worked
13 in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
14 wages, including all overtime compensation to which he was entitled for hours worked in excess of
15 forty (40) hours per week and/or eight (8) hours per day.

16 **32.** Plaintiff SEAN W. LEE is a resident of Boulder, Colorado, and was employed by 24 Hour
17 Fitness from on or about February, 2000 to on or about April, 2004, at a 24 Hour Fitness located in the
18 State of Colorado, as a Sales Counselor, and Assistant General Manager. As a Sales Counselor, and
19 Assistant General Manager, SEAN W. LEE regularly worked in excess of forty (40) hours per week
20 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
21 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
22 eight (8) hours per day.

23 **33.** Plaintiff BRIAN HARRINGTON LEWIS is a resident of Parker, Colorado, and was employed
24 by 24 Hour Fitness from on or about February, 1998 to the present, at a 24 Hour Fitness located in the
25 State of Colorado, as a Personal Trainer, and Fitness Manager. As a Personal Trainer, and Fitness
26 Manager, BRIAN HARRINGTON LEWIS regularly worked in excess of forty (40) hours per week
27 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
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1 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
2 eight (8) hours per day.

3 34. Plaintiff KRISTOPHER MICHAEL MARTINO is a resident of Henderson, Nevada, and was
4 employed by 24 Hour Fitness from on or about July 17, 1999 to on or about January 19, 2005, at 24
5 Hour Fitness locations in the States of Nevada and Washington, as a Personal Trainer. As a Personal
6 Trainer, KRISTOPHER MICHAEL MARTINO regularly worked in excess of forty (40) hours per
7 week and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
8 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
9 eight (8) hours per day.

10 35. Plaintiff MARCEL MATTHEWS is a resident of Las Vegas, Nevada, and was employed by
11 24 Hour Fitness from on or about September, 2001 to on or July, 2004, at a 24 Hour Fitness located in
12 the State of Nevada, as a Personal Trainer, Sales Counselor, Assistant General Manager, General
13 Manager, and Assistant Fitness Manager. As a Personal Trainer, Sales Counselor, Assistant General
14 Manager, General Manager, and Assistant Fitness Manager, MARCEL MATTHEWS regularly
15 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
16 minimum wages, including all overtime compensation to which he was entitled for hours worked in
17 excess of forty (40) hours per week and/or eight (8) hours per day.

18 36. Plaintiff DANUAL MEYERS is a resident of Las Vegas, Nevada, and was employed by 24
19 Hour Fitness from on or about June, 2001 to on or about May, 2003, at a 24 Hour Fitness located in
20 the State of Nevada, as a Personal Trainer, and Floor Supervisor. As a Personal Trainer, and Floor
21 Supervisor, DANUAL MEYERS regularly worked in excess of forty (40) hours per week and eight
22 (8) hours per day, but failed to receive all minimum wages, including all overtime compensation to
23 which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours
24 per day.

25 37. Plaintiff JUDE M. MONTOYA is a resident of Las Vegas, Nevada, and was employed by 24
26 Hour Fitness from on or about July, 1994 to on or about September, 2002, at 24 Hour Fitness
27 locations in the States of Utah and Nevada, as a General Manager. As a General Manager, JUDE M.
28 MONTOYA regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but

1 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
2 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

3 38. Plaintiff JAMES EDWARD MOREY is a resident of Littleton, Colorado, and was employed
4 by 24 Hour Fitness from on or about December 1, 2002 to on or December 15, 2004, at a 24 Hour
5 Fitness located in the State of Colorado, as an Assistant General Manager. As an Assistant General
6 Manager, JAMES EDWARD MOREY regularly worked in excess of forty (40) hours per week and
7 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
8 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
9 hours per day.

10 39. Plaintiff JOHN NESMITH is a resident of Shoreline, Washington, and was employed by 24
11 Hour Fitness from on or about February, 2002 to on or about August, 2003, at a 24 Hour Fitness
12 located in the State of Washington, as a Sales Counselor, Assistant General Manager, and General
13 Manager. As a Sales Counselor, Assistant General Manager, and General Manager, JOHN
14 NESMITH regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but
15 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
16 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

17 40. Plaintiff ANDREW W. NEWCOMB is a resident of Henderson, Nevada, and was employed
18 by 24 Hour Fitness from on or about August, 2000 to on or about April, 2004, at a 24 Hour Fitness
19 located in the State of Nevada, as a Sales Counselor, Assistant General Manager, and General
20 Manager. As a Sales Counselor, Assistant General Manager, and General Manager, ANDREW W.
21 NEWCOMB regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but
22 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
23 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

24 41. Plaintiff BRANDON F. NEIL is a resident of Kent, Washington, and was employed by 24
25 Hour Fitness from on or about 2003 to on or about 2004, at a 24 Hour Fitness located in the State of
26 Washington, as a Sales Counselor. As a Sales Counselor, BRANDON F. NEIL regularly worked in
27 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
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1 wages, including all overtime compensation to which he was entitled for hours worked in excess of
2 forty (40) hours per week and/or eight (8) hours per day.

3 42. Plaintiff JAMES L. OGDEN is a resident of Bellevue, Washington, and was employed by 24
4 Hour Fitness from on or about June, 2004 to on or about February, 2005, at a 24 Hour Fitness located
5 in the State of Washington, as a Personal Trainer, Floor Supervisor, and Fitness Manager. As a
6 Personal Trainer, Floor Supervisor, and Fitness Manager, JAMES L. OGDEN regularly worked in
7 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
8 wages, including all overtime compensation to which he was entitled for hours worked in excess of
9 forty (40) hours per week and/or eight (8) hours per day.

10 43. Plaintiff STEVE ORRICO is a resident of Las Vegas, Nevada, and was employed by 24 Hour
11 Fitness from on or about February 20, 2001 to on or about March 31, 2003, and on or about
12 November 1, 2003 to on or about July 31, 2004, at 24 Hour Fitness locations in the States of Idaho
13 and Nevada, as a Sales Counselor, Assistant General Manager, and General Manager. As a Sales
14 Counselor, Assistant General Manager, and General Manager, STEVE ORRICO regularly worked in
15 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
16 wages, including all overtime compensation to which he was entitled for hours worked in excess of
17 forty (40) hours per week and/or eight (8) hours per day.

18 44. Plaintiff ANNIE OSTOLASA is a resident of Seattle, Washington, and was employed by 24
19 Hour Fitness from on or about April, 1997 to on or about June, 2004, at 24 Hour Fitness locations in
20 the States of California, Idaho and Washington, as a General Manager, Operations Manager, District
21 Operations Manager, Regional Service Manager, and Regional Vice President of Operations. As a
22 General Manager, Operations Manager, District Operations Manager, Regional Service Manager, and
23 Regional Vice President of Operations, ANNIE OSTOLASA regularly worked in excess of forty (40)
24 hours per week and eight (8) hours per day, but failed to receive all minimum wages, including all
25 overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
26 week and/or eight (8) hours per day.

27 45. Plaintiff RYAN PARKER is a resident of Boulder, Colorado, and was employed by 24 Hour
28 Fitness from on or about August, 2003 to on or about April, 2005, at a 24 Hour Fitness located in the

1 State of Colorado, as a Sales Counselor, and Assistant General Manager. As a Sales Counselor, and
2 Assistant General Manager, RYAN PARKER regularly worked in excess of forty (40) hours per week
3 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
4 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
5 eight (8) hours per day.

6 46. Plaintiff TIMOTHY F. PAUDLER is a resident of Puyallup, Washington, and was employed
7 by 24 Hour Fitness from on or about March, 1999 to on or about August, 2003, at 24 Hour Fitness
8 locations in the States of Utah, Idaho and Washington, as an Assistant General Manager, General
9 Manager, and District Manager. As an Assistant General Manager, General Manager, and District
10 Manager, TIMOTHY F. PAUDLER regularly worked in excess of forty (40) hours per week and eight
11 (8) hours per day, but failed to receive all minimum wages, including all overtime compensation to
12 which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours
13 per day.

14 47. Plaintiff KYLE PHILLIPS is a resident of Overland Park, Kansas, and was employed by 24
15 Hour Fitness from on or about July 15, 2002 to the present, at a 24 Hour Fitness located in the State of
16 Kansas, as a Sales Counselor, and Assistant General Manager. As a Sales Counselor, and Assistant
17 General Manager, KYLE PHILLIPS regularly worked in excess of forty (40) hours per week and
18 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
19 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
20 hours per day.

21 48. Plaintiff MATTHEW POPELKA is a resident of Arvada, Colorado, and was employed by 24
22 Hour Fitness from on or about June, 1996 to on or about February, 2005, at a 24 Hour Fitness located
23 in the State of Colorado. MATTHEW POPELKA regularly worked in excess of forty (40) hours per
24 week and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
25 compensation to which he was entitled for hours worked in excess of forty (40) hours per week and/or
26 eight (8) hours per day.

27 49. Plaintiff SABRINA PRIESMAN is a resident of Mission Viejo, California, and was employed
28 by 24 Hour Fitness from on or about October, 1990 to on or about July, 2004, at 24 Hour Fitness

1 locations in the States of Nevada and California, as an Operations Manager. As an Operations
 2 Manager, SABRINA PRIESMAN regularly worked in excess of forty (40) hours per week and eight
 3 (8) hours per day, but failed to receive all minimum wages, including all overtime compensation to
 4 which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours
 5 per day.

6 **50.** Plaintiff WILLIAM E. RAINALDO, JR. is a resident of Las Vegas, Nevada, and was
 7 employed by 24 Hour Fitness from on or about January, 2004 to on or about August, 2004, at a 24
 8 Hour Fitness located in the State of Nevada, as an Assistant General Manager, and General Manager.
 9 As an Assistant General Manager, and General Manager, WILLIAM E. RAINALDO, JR. regularly
 10 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
 11 minimum wages, including all overtime compensation to which he was entitled for hours worked in
 12 excess of forty (40) hours per week and/or eight (8) hours per day.

13 **51.** Plaintiff ALFRED RA'OOF is a resident of Auburn, Washington, and was employed by 24
 14 Hour Fitness from on or about October, 1998 to the present, at a 24 Hour Fitness located in the State
 15 of Washington, as a Personal Trainer, Fitness Manager, and General Manager. As a Personal Trainer,
 16 Fitness Manager, and General Manager, ALFRED RA'OOF regularly worked in excess of forty (40)
 17 hours per week and eight (8) hours per day, but failed to receive all minimum wages, including all
 18 overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
 19 week and/or eight (8) hours per day.

20 **52.** Plaintiff JAMES REED is a resident of Broomfield, Colorado, and was employed by 24 Hour
 21 Fitness from on or about September 19, 2001 to the present, at a 24 Hour Fitness located in the State
 22 of Colorado, as a Sales Counselor. As a Sales Counselor, JAMES REED regularly worked in excess
 23 of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum wages,
 24 including all overtime compensation to which he was entitled for hours worked in excess of forty (40)
 25 hours per week and/or eight (8) hours per day.

26 **53.** Plaintiff DANIELLE RELPH is a resident of Woodinville, Washington, and was employed by
 27 24 Hour Fitness from on or about 1999 to on or about 2005, at a 24 Hour Fitness located in the State
 28 of Washington, as a Personal Trainer, and Group Fitness Instructor. As a Personal Trainer, and Group

1 Fitness Instructor, DANIELLE RELPH regularly worked in excess of forty (40) hours per week and
2 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
3 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
4 hours per day.

5 54. Plaintiff MATTHEW REITER is a resident of Las Vegas, Nevada, and was employed by 24
6 Hour Fitness from on or about December, 2001 to the present, at a 24 Hour Fitness located in the State
7 of Nevada, as a Fitness Manager, and Personal Trainer. As a Fitness Manager, and Personal Trainer,
8 MATTHEW REITER regularly worked in excess of forty (40) hours per week and eight (8) hours per
9 day, but failed to receive all minimum wages, including all overtime compensation to which he was
10 entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

11 55. Plaintiff ANTHONY ROMEO is a resident of Las Vegas, Nevada, and was employed by 24
12 Hour Fitness from on or about November, 2002 to on or about July, 2004, at a 24 Hour Fitness located
13 in the State of Nevada, as an Operations Manager. As an Operations Manager, ANTHONY ROMEO
14 regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to
15 receive all minimum wages, including all overtime compensation to which he was entitled for hours
16 worked in excess of forty (40) hours per week and/or eight (8) hours per day.

17 56. Plaintiff CHAD V. RUF is a resident of North Glen, Colorado, and was employed by 24 Hour
18 Fitness from on or about December, 1996 to on or about February, 2005, at a 24 Hour Fitness located
19 in the State of Colorado, as a Personal Trainer, Sales Counselor, Fitness Manager, Floor Supervisor,
20 Assistant General Manager, General Manager, and District Manager. As a Personal Trainer, Sales
21 Counselor, Fitness Manager, Floor Supervisor, Assistant General Manager, General Manager, and
22 District Manager, CHAD V. RUF regularly worked in excess of forty (40) hours per week and eight
23 (8) hours per day, but failed to receive all minimum wages, including all overtime compensation to
24 which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours
25 per day.

26 57. Plaintiff ADAM SHERRILL is a resident of Puyallup, Washington, and was employed by 24
27 Hour Fitness from on or about August 1, 2003 to on or about October 15, 2004, at a 24 Hour Fitness
28 located in the State of Washington, as a General Manager. As a General Manager, ADAM

1 SHERRILL regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but
2 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
3 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

4 58. Plaintiff MARK SLOMKA is a resident of Spring Hill, Florida, and was employed by 24 Hour
5 Fitness from on or about November, 2003 to on or about June, 2004, at a 24 Hour Fitness located in
6 the State of Nevada, as a Sales Counselor. As a Sales Counselor, MARK SLOMKA regularly worked
7 in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
8 wages, including all overtime compensation to which he was entitled for hours worked in excess of
9 forty (40) hours per week and/or eight (8) hours per day.

10 59. Plaintiff EVAN SOOPER is a resident of Henderson, Nevada, and was employed by 24 Hour
11 Fitness from on or about February, 2001 to on or about April, 2004, at a 24 Hour Fitness located in the
12 State of Nevada, as a Personal Trainer, Sales Counselor, Floor Supervisor, and Fitness Manager. As a
13 Personal Trainer, Sales Counselor, Floor Supervisor, and Fitness Manager, EVAN SOOPER regularly
14 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
15 minimum wages, including all overtime compensation to which he was entitled for hours worked in
16 excess of forty (40) hours per week and/or eight (8) hours per day.

17 60. Plaintiff KIMBERLY S. STRUBLE is a resident of Superior, Colorado, and was employed by
18 24 Hour Fitness from on or about May, 26, 2000 to on or about May 15, 2003, at 24 Hour Fitness
19 locations in the States of Kansas, Missouri and Colorado, as an Assistant Operations Manager, and
20 Operations Manager. As an Assistant Operations Manager, and Operations Manager, KIMBERLY S.
21 STRUBLE regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but
22 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
23 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

24 61. Plaintiff REBECCA L. TOBIN is a resident of Henderson, Nevada, and was employed by 24
25 Hour Fitness from on or about May, 2002 to on or about November, 2002, at a 24 Hour Fitness
26 located in the State of Nevada, as a Floor Supervisor, Trainer Fitness Professional, and Trainer Fitness
27 Professional Elite. As a Floor Supervisor, Trainer Fitness Professional, and Trainer Fitness
28 Professional Elite, REBECCA L. TOBIN regularly worked in excess of forty (40) hours per week and

1 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
2 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
3 hours per day.

4 62. Plaintiff JOHN UDDEN is a resident of Superior, Colorado, and was employed by 24 Hour
5 Fitness from on or about May, 1998 to on or about November, 2004, at 24 Hour Fitness locations in
6 the States of Kansas and Colorado, as a Personal Trainer, Fitness Manager, Assistant General
7 Manager, and General Manager. As a Personal Trainer, Fitness Manager, Assistant General Manager,
8 and General Manager, JOHN UDDEN regularly worked in excess of forty (40) hours per week and
9 eight (8) hours per day, but failed to receive all minimum wages, including all overtime compensation
10 to which he was entitled for hours worked in excess of forty (40) hours per week and/or eight (8)
11 hours per day.

12 63. Plaintiff JASON VALLEY is a resident of Lynwood, Washington, and was employed by 24
13 Hour Fitness from on or about October, 1998 to on or about November, 2004, at a 24 Hour Fitness
14 located in the State of Washington, as a Personal Trainer, Sales Counselor, Fitness Manager, Assistant
15 General Manager, and General Manager. As a Personal Trainer, Sales Counselor, Fitness Manager,
16 Assistant General Manager, and General Manager, JASON VALLEY regularly worked in excess of
17 forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum wages,
18 including all overtime compensation to which he was entitled for hours worked in excess of forty (40)
19 hours per week and/or eight (8) hours per day.

20 64. Plaintiff ADAM L. VEST is a resident of Austin, Texas, and was employed by 24 Hour
21 Fitness from on or about September, 2001 to on or about April, 2004, at a 24 Hour Fitness located in
22 the State of Nevada, as a Sales Counselor, Floor Manager, Assistant General Manager, and General
23 Manager. As a Sales Counselor, Floor Manager, Assistant General Manager, and General Manager,
24 ADAM L. VEST regularly worked in excess of forty (40) hours per week and eight (8) hours per day,
25 but failed to receive all minimum wages, including all overtime compensation to which he was
26 entitled for hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

27 65. Plaintiff CHRISTOPHER VINCENT is a resident of Las Vegas, Nevada, and was employed
28 by 24 Hour Fitness from on or about April 20, 2002 to on or about April 30, 2004, at 24 Hour Fitness

1 locations in the States of Washington, Idaho and Nevada, as an Assistant General Manager, and
2 General Manager. As an Assistant General Manager, and General Manager, CHRISTOPHER
3 VINCENT regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but
4 failed to receive all minimum wages, including all overtime compensation to which he was entitled for
5 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

6 66. Plaintiff MARK WHITE is a resident of Las Vegas, Nevada, and was employed by 24 Hour
7 Fitness from on or about April, 2002 to on or about November, 2002, at a 24 Hour Fitness located in
8 the State of Washington, as a General Manager. As a General Manager, MARK WHITE regularly
9 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
10 minimum wages, including all overtime compensation to which he was entitled for hours worked in
11 excess of forty (40) hours per week and/or eight (8) hours per day.

12 67. Plaintiff DAVID WOOD is a resident of Las Vegas, Nevada, and was employed by 24 Hour
13 Fitness from on or about April, 1998 to on or about August, 2002, at 24 Hour Fitness locations in the
14 States of California and Nevada, as a Sales Counselor, and Assistant General Manager. As a Sales
15 Counselor, and Assistant General Manager, DAVID WOOD regularly worked in excess of forty (40)
16 hours per week and eight (8) hours per day, but failed to receive all minimum wages, including all
17 overtime compensation to which he was entitled for hours worked in excess of forty (40) hours per
18 week and/or eight (8) hours per day.

19 68. Plaintiff JOSHUA WOODSON is a resident of Chandler, Arizona, and was employed by 24
20 Hour Fitness from on or about December, 2001 to on or about November, 2003, at a 24 Hour Fitness
21 located in the State of Washington, as a Sales Counselor, and Assistant General Manager. As a Sales
22 Counselor, and Assistant General Manager, JOSHUA WOODSON regularly worked in excess of
23 forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum wages,
24 including all overtime compensation to which he was entitled for hours worked in excess of forty (40)
25 hours per week and/or eight (8) hours per day.

26 69. By the filing of this Complaint, each of the named Plaintiffs, consent to sue with respect to
27 each such Plaintiff's FLSA claim for relief against 24 HOUR FITNESS, pursuant to section 16(b) of
28 the FLSA, 29 U.S.C. §216(b) and hereby seek relief under that provision. Hundreds of other similarly

1 situated General Managers, Fitness Managers, Operations Managers, Assistant General Managers,
 2 Assistant Fitness Managers, Assistant Operations Managers, Sales Counselors, Personal Trainers, ,
 3 Front Desk Employees, Customer Relations Supervisors, Floor Supervisors and Group X Instructors,
 4 other than current or former employees who executed a Claim Form to participate in the class action
 5 settlement, referenced in paragraph 70 herein below as the *Boyce Litigation*, may elect to join this
 6 collective action if given proper notice of the pendency of the action and an opportunity to participate
 7 by "opting in." Consents to Sue on behalf of additional FLSA Collective Members may be filed as
 8 this litigation progresses.

9 **Defendants**

10 70. Defendant 24 HOUR FITNESS, USA, INC., is, and at all relevant times mentioned herein
 11 was, a California corporation also doing business as 24 Hour Fitness under the laws of the State of
 12 California with places of business in San Ramon, California.

13 71. Defendant SPORT AND FITNESS CLUBS OF AMERICA, INC., is, and at all relevant times
 14 mentioned herein was, an Ohio corporation registered to do business in California as 24 Hour Fitness
 15 under the laws of the State of California, in San Ramon, California.

16 **COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

17 72. Plaintiffs bring their Claim for Relief for Violation of the FLSA as an "opt-in" collective
 18 action pursuant to Section 16(b) of the FLSA (29 U.S.C. § 216(b)), on behalf of all person who were,
 19 are or will be employed by Defendant 24 Hour Fitness as General Managers, Fitness Managers,
 20 Operations Managers, Assistant General Managers, Assistant Fitness Managers, Assistant Operations
 21 Managers, Sales Counselors, Personal Trainers, Juice Bar Supervisors, Front Desk Employees,
 22 Customer Relations Supervisors, Floor Supervisors and Group X Instructors throughout the United
 23 States, at any time within the applicable statute of limitations period, who have not been compensated
 24 for all minimum wages and at one and one-half the regular rate of pay for all work performed in
 25 excess of forty (40) hours per week; these FLSA Collective Members' claims do not include any
 26 claims that were the subject of a release of claims in: *Boyce v. Sport and Fitness Clubs of America*,
 27 Case No. 03-CV-2140 BEN (U.S.D.C. S.D.Cal.) (filed October 29, 2003), *Levine v. 24 Hour Fitness*,
 28 Case No. 02-CC00386 (Orange County Superior Court) (filed December 31, 2002); *Ynzunza v. 24*

1 *Hour Fitness*, Case No. 03-CC00006 (Orange County Superior Court) (filed January 6, 2003);
2 *Seewoster v. 24 Hour Fitness*, Case No. 03-CC00576 (Orange County Superior Court) (filed
3 December 23, 2003); *Shetler v. 24 Hour Fitness*, Case No. GIC 829814 (San Diego County Superior
4 Court) (filed May 11, 2004); *Northrup v. 24 Hour Fitness*, Case No. BC321194 (Los Angeles
5 County Superior Court) (filed September 8, 2004), which actions are herein after collectively referred
6 to as the "*Boyce Litigation*". This collective action is not brought on behalf of individuals who timely
7 filed a Claim Form to participate in the class action settlement in the *Boyce Litigation*.

8 73. Defendants stipulated in the *Boyce Litigation* that the statute of limitations for FLSA claims for
9 its current and former employees were tolled between November 9, 2004 and the approval of the
10 settlement of the *Boyce Litigation* settlement. Plaintiffs are informed and believe that the *Boyce*
11 *Litigation* settlement was granted final approval on January 26, 2006.

12 74. Questions of law and fact common to the FLSA Collective Members as a whole include, but
13 are not limited to, the following:

14 (a) Whether 24 HOUR FITNESS unlawfully failed and continues to fail to pay
15 minimum wages and overtime compensation in violation of the FLSA; 29 U.S.C. §§201, *et*
16 *seq.*;

17 (b) Whether 24 HOUR FITNESS's failure to pay overtime to its non-exempt
18 FLSA Collective Plaintiffs was willful within the meaning of the FLSA;

19 (c) Whether 24 HOUR FITNESS failed and continues to fail to maintain
20 accurate records of actual time worked by the FLSA Collective Members and prospective
21 FLSA Collective Members;

22 (d) Whether 24 HOUR FITNESS failed and continues to fail to record or report
23 all time worked by the FLSA Collective Plaintiffs and prospective FLSA Collective
24 Members.

25 (e) Whether 24 HOUR FITNESS failed and continues to fail to provide
26 accurate wage statements itemizing all actual time worked and wages earned by the FLSA
27 Collective Plaintiffs and prospective FLSA Collective Members.
28

1 Plaintiffs and FLSA Collective Members are similarly situated, have substantially similar job
2 requirements and pay provisions, and are subject to the Defendants' common practice, policy or plan
3 of refusing to pay overtime in violation of the FLSA and unlawfully characterizing certain FLSA
4 Collective Plaintiffs and FLSA Collective Members as exempt employees.

5 **75.** Plaintiff's Claims for Relief for violations of the FLSA may be brought and maintained as an
6 "opt-in" collective action pursuant to Section 16(b) of the FLSA, for all claims asserted by the
7 Plaintiffs and the FLSA Collective Members (FLSA claims), because the claims of the Plaintiffs are
8 similar to the claims of the members of the prospective FLSA Collective Members.

9 **76.** While the exact number of FLSA Collective Members is unknown to Plaintiffs at the present
10 time, based on information and belief, there are more than 1,000 such persons. Thus, a collective
11 action is the most efficient mechanism for resolution of the FLSA Collective Members' claims.

12 **77.** The FLSA Collective Members, on behalf of whom Plaintiffs bring this "opt-in" collective
13 action, are similarly situated because they have been or are employed in the same or similar position
14 as individually-named Plaintiffs and were subject to the same or similar unlawful practices as the
15 individually-named Plaintiffs, as described above. The number and identity of other Plaintiffs yet to
16 opt-in and consent to be a Plaintiff may be determined from the records of 24 Hour Fitness, and
17 potential Plaintiffs may be notified of the pendency of this action utilizing the payroll records of 24
18 Hour Fitness. At all times during the FLSA Collective Period, all of the FLSA Collective Members
19 were employed in the same or similar job as the Plaintiffs and were paid in the same manner and
20 under the same standard employment procedures and practices as the Plaintiffs.

21 **78.** During the FLSA Collective Period, Defendants were fully aware that the primary duties of
22 Plaintiffs and the FLSA Collective Members were inconsistent with exempt status, and that the FLSA
23 Collective Members were and are not exempt from the overtime provisions of the FLSA.

24 **79.** The Defendants' violations of 29 U.S.C. §207(a) were repeated, willful and intentional.

25 **80.** The Plaintiffs and the FLSA Collective Members have been damaged by said violations of 29
26 U.S.C. §207(a).

27 **81.** Pursuant to 29 U.S.C. §207(a) and §216(b), Defendants are liable to the Plaintiffs and the
28 FLSA Collective Members for the full amount of all their unpaid wages, including, overtime

1 compensation, plus an additional equal amount as liquidated damages, plus the attorneys fees and
 2 costs of the Plaintiffs and FLSA Collective Members who affirmatively "opt-in" to this collective
 3 action.

4 **82.** In addition, an action under 29 U.S.C. §216(b) is superior to other available methods for the
 5 fair and efficient adjudication of this controversy since the damages suffered by individual members
 6 of the FLSA Collective Action may be relatively small, and the expense and burden of individual
 7 arbitrations would make it impossible for such FLSA Collective Members to individually redress the
 8 wrongs done to them.

9 **83.** Moreover, because of the similarity of the FLSA Collective Members' claims, individual
 10 actions would present the risk of inconsistent adjudications subjecting both employees and Defendants
 11 to incompatible standards of conduct.

12 **84.** Plaintiffs are currently unaware of the identities of all the FLSA Collective Members.
 13 Accordingly, Defendants should be required to provide to Plaintiffs a list of all persons employed by
 14 Defendants as General Managers, Assistant General Managers, Fitness Managers, Assistant Fitness
 15 Managers, Operations Managers, Assistant Operations Managers, Commission Sales Persons, and
 16 Trainers since January 24, 2002, who did not timely file a Claim Form to participate in the class
 17 action settlement in the *Boyce Litigation*, stating their last known addresses and telephone numbers, so
 18 that Plaintiffs can provide such prospective FLSA Collective Members notice of the pendency of this
 19 action and an opportunity to make an informed decision about whether to participate in it.

20 **CLAIM FOR RELIEF**

21 [Against Defendant 24 HOUR FITNESS]

22 (FLSA Claims, 29 U.S.C. §§201, *et seq.*, Brought by All Plaintiffs on Behalf of Themselves and All
 23 FLSA Collective Members)

24 **85.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 84 as if they were set
 25 forth again herein.

26 **86.** At all relevant times, 24 HOUR FITNESS has been, and continues to be, an "employer"
 27 engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. §203. At all relevant
 28

1 times, 24 HOUR FITNESS has employed, and continues to employ "employee[s]," including the
2 Plaintiffs and each of the FLSA Collective Members.

3 87. Defendants 24 HOUR FITNESS operates, and at all times during the liability period, has
4 operated health clubs in numerous states.

5 88. Each of the Plaintiffs identified in paragraphs 11 through 69 consents to sue in this action
6 pursuant to section 16(b) of the FLSA, 29 U.S.C. §216(b). Additional potential FLSA Collective
7 Members may execute and file forms consenting to "opt in" and joining as Plaintiffs in this collective
8 action.

9 89. The FLSA requires each covered employer, such as Defendant 24 HOUR FITNESS, to
10 compensate each of its non-exempt employees at a rate of not less than one and one-half the regular
11 rate of pay for work performed in excess of forty (40) hours in a work week.

12 90. Defendants have employed and continue to employ numerous General Managers, Fitness
13 Managers, Operations Managers, Assistant General Managers, Assistant Fitness Managers, Assistant
14 Operations Managers, Sales Counselors, Personal Trainers, Juice Bar Supervisors, Front Desk
15 Employees, Customer Relations Supervisors, Floor Supervisors and Group X Instructors, including
16 Plaintiffs to operate their health clubs.

17 91. Plaintiffs and FLSA Collective Members are not exempt from the right to receive minimum
18 wages and overtime pay under the FLSA and are not exempt from the requirement that 24 HOUR
19 FITNESS pay them overtime compensation under the FLSA. The FLSA Plaintiffs and FLSA
20 Collective Members are entitled to be paid overtime compensation for all overtime hours worked.

21 92. At all relevant times, 24 HOUR FITNESS had a policy and practice of failing and refusing to
22 pay minimum wages and overtime pay to its General Managers, Fitness Managers, Operations
23 Managers, Assistant General Managers, Assistant Fitness Managers, Assistant Operations Managers,
24 Sales Counselors, Personal Trainers, Juice Bar Supervisors, Front Desk Employees, Customer
25 Relations Supervisors, Floor Supervisors and Group X Instructors, for their hours worked in excess of
26 forty (40) hours per week, whether through the failure to provide any overtime pay, the denial of
27 premium pay for all overtime hours actually worked, and/or the failure to calculate and pay overtime
28 premiums according to law.

1 93. As a result of 24 HOUR FITNESS's failure to compensate its General Managers, Fitness
2 Managers, Operations Managers, Assistant General Managers, Assistant Fitness Managers, Assistant
3 Operations Managers, Sales Counselors, Personal Trainers, Juice Bar Supervisors, Front Desk
4 Employees, Customer Relations Supervisors, Floor Supervisors and Group X Instructors, including
5 the Plaintiffs and FLSA Collective Members, for all minimum wages for hours worked and at a rate
6 not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours
7 in a work week, 24 HOUR FITNESS has violated, and continues to violate, the FLSA, including 29
8 U.S.C. §§207(a)(1) and 215(a).

9 94. As a result of 24 HOUR FITNESS's failure to record, report, credit, and/or compensate its
10 General Managers, Fitness Managers, Operations Managers, Assistant General Managers, Assistant
11 Fitness Managers, Assistant Operations Managers, Sales Counselors, Personal Trainers, Juice Bar
12 Supervisors, Front Desk Employees, Customer Relations Supervisors, Floor Supervisors and Group X
13 Instructors, including Plaintiffs and Nationwide FLSA Collective Members, 24 HOUR FITNESS has
14 failed to make, keep and preserve records with respect to each of its employees sufficient to determine
15 the wages, hours and other conditions and practices of employment in violation of the FLSA,
16 including 29 U.S.C. §§211(c) and 215(a).

17 95. The foregoing conduct, as alleged, constitute a willful violation of the FLSA within the
18 meaning of 29 U.S.C. §255(a).

19 96. Plaintiffs, on behalf of themselves and FLSA Collective Members, seek damages in the
20 amount of their respective unpaid overtime compensation, plus liquidated damages, as provided by the
21 FLSA, 19 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and
22 proper.

23 97. Plaintiffs, on behalf of themselves and FLSA Collective Members, seek recovery of their
24 attorneys' fees and costs of action to be paid by 24 HOUR FITNESS, as provided by the FLSA, 29
25 U.S.C. §216(b).

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

Declaratory Relief Against All Defendants

(FRCP 23; FRCP 23(b)(1) and (b)(2))

98. Plaintiffs incorporate by reference the allegations of paragraphs 1-97 herein above as though set forth in full at this point.

99. Defendants drafted and published a provision in their Employee Handbook in effect during the applicable collective claims period referenced in this collective action, which provision purportedly required all disputes between employees and Defendants to be arbitrated. Plaintiffs are informed and believe that 24 HOUR FITNESS did not provide any the Plaintiffs or the FLSA Collective Members the opportunity to exclude themselves from the arbitration provision. Said arbitration provision provided as follows:

NATURE OF THE DISPUTE

If any dispute arises from or relates to your employment with 24 Hour Fitness or the termination of your employment, you and 24 Hour Fitness agree that you both will submit it exclusively to final arbitration. Except for workers' compensation and unemployment insurance claims, the dispute includes every kind or type of dispute including, without limitation, any allegation of wrongful discharge, discrimination, harassment, unfair competition, or any injury to a party's physical, mental or economic interest. Unless controlling legal authority requires otherwise, there shall be no right or authority for any dispute to be heard or arbitrated on a class action basis, as a private attorney general, or on a basis involving disputes brought in a purported representative capacity on behalf of the general public, provided, however, that any individual claim is subject to this agreement to arbitrate. This means that a neutral arbitrator, rather than a court or jury, will decide the dispute.

CONTROLLING LAW

We agree to settle the dispute according to the provisions of the Federal Arbitration Act, 9 U.S.C. sections 1 – 16. All disputes will be resolved by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties.

1 **100.** A controversy presently exists in that Plaintiffs maintain that the purported ban or prohibition
2 on class actions, class arbitrations, and representative actions set forth in Defendants' arbitration
3 provision does not apply to 29 U.S.C. §216(b) collective actions. This collective action is brought on
4 behalf of current and former *employees* of Defendants in the states referenced herein above, and not
5 on behalf of members of the general public. Certain of the Plaintiffs requested Defendants to arbitrate
6 their FLSA claims on a collective basis and Defendants have refused to do so. Plaintiffs are informed
7 and believe that Defendants contend that the purported ban on class actions, class arbitrations and
8 representative actions brought on behalf of members of the general public extends to Section 216(b)
9 collective actions. Given this uncertainty of terms, the purported ban on or prohibition of class
10 actions, class arbitrations, and representative actions is both procedurally and substantively
11 unconscionable, and for that reason is unenforceable.

12 **101.** A controversy presently exists in that Plaintiffs maintain that the purported ban or prohibition
13 on class actions, class arbitrations, and representative actions brought on behalf of members of the
14 general public is unenforceable because the phrase in the arbitration clause triggering the purported
15 ban or prohibition on class actions, class arbitrations, and representative actions brought on behalf of
16 members of the general public -- "Unless controlling legal authority requires otherwise" -- is uncertain
17 and illusory. Plaintiffs were unaware at the implementation of the purported ban or prohibition
18 whether "controlling legal authority required otherwise" and therefore could not knowingly assent to
19 the purported ban or prohibition on class actions, class arbitrations, and representative actions brought
20 on behalf of members of the general public.

21 **102.** A controversy presently exists in that Plaintiffs maintain that the purported ban or prohibition
22 on class actions, class arbitrations, and representative actions on behalf of members of the general
23 public is unenforceable because the arbitration provision is also vague and unconscionable, and
24 therefore unenforceable, in that it purports to assert that neither party is responsible for the other
25 attorneys' fees and costs of the other party, while later asserting that either party may recover
26 attorneys' fees and costs "subject to any remedy to which a prevailing party may be entitled under the
27 law." The arbitration provision then asserts again that each party will "bear its own its own expenses
28 such as attorneys' fees and costs." This language is vague and ambiguous and as such, unenforceable

1 and biased against employees. Under the provisions of the FLSA, employees are entitled to recover
2 their attorneys' fees and costs. The unclear and ambiguous language may cause employees to falsely
3 believe that they will be liable to Defendants for Defendants' attorneys' fees and costs, while also
4 causing employees to believe that they will not be able to recover their own attorneys' fees and costs,
5 and discourage FLSA Collective Members from joining or "opting in" to this collective action
6 because they are concerned that they may be liable for Defendants' attorneys fees and costs. The
7 portion of the arbitration provision hinders employees from pursuing their own rights via the
8 arbitration provision and renders that portion of the arbitration provision unconscionable. By this
9 Court making a declaratory judgment at the commencement of this action that employees who join or
10 "opt in" to this collective action are not liable for Defendants' attorneys' fees and costs it will allow
11 potential FLSA Collective Members to make a reasoned decision about participating in this collective
12 action.

13 **103.** A controversy presently exists in that Plaintiffs maintain that the purported ban or prohibition
14 on class actions, class arbitrations, and representative actions on behalf of members of the general
15 public is unenforceable because the arbitration provision is also an uncertain term as the language in
16 the arbitration clause providing for the payment of the costs of arbitration, provides as follows: "If
17 required by controlling law, 24 Hour Fitness will pay the fee for the arbitration proceeding.
18 Otherwise, each party will equally bear the costs of arbitration." This language is vague, ambiguous
19 and illusory and requires Plaintiffs and FLSA Collective Members to have knowledge of the law on
20 who pays the costs of an employee/employer arbitration; therefore, the arbitration clause is uncertain
21 and therefore unenforceable as well as procedurally and substantively unconscionable and therefore
22 unenforceable.

23 **104.** Plaintiffs have no speedy or adequate remedy except through a declaratory relief action in
24 which to assert the invalidity of the portions of the arbitration provision banning class actions, class
25 arbitrations, and representative actions and potentially requiring employees to pay the Defendants'
26 attorneys' fees and costs. Further the law requires a competent court of civil jurisdiction to make a
27 determination of the appropriateness of class or collective certification prior to any determination
28

1 whether the action may be subject to binding arbitration and this procedure cannot be completed in
2 any forum other than the District Court.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs on behalf of themselves and all members similarly situated pray for relief as
5 follows:

6 A. Designation of this action as a collective action on behalf of the proposed FLSA Collective
7 Members asserting FLSA claims, with the exception of employees of Defendants whose claims are
8 the subject of a waiver in the *Boyce Litigation* and prompt issuance of notice pursuant to 29 U.S.C.
9 §216(b) to all similarly situated members of the FLSA Opt-In action, apprizing them of the pendency
10 of this action, and permitting them to assert timely FLSA claims in this action by filing individual
11 Consent to Sue forms pursuant to 29 U.S.C. §216(b), and a tolling of the statute of limitations on the
12 FLSA Collective Members' claims from the date of a tolling agreement entered into between 24 Hour
13 Fitness and certain employees in the *Boyce* litigation referenced in paragraph 73, above, until the
14 FLSA Collective Members are provided with reasonable notice of the pendency of this action and a
15 fair opportunity to exercise their right to opt in as Plaintiffs.

16 B. Designation of Plaintiffs GABE BEAUPERTHUY, MICHAEL CHALMERS, ALEXIS
17 COVARRUBIAS, JOHN DAVIDSSON, LINDSAY D'ERRICO, BOBBY DESOTO, JASON A.
18 DIGENNARO, LAWRENCE O'NEILL DICKERSON, ANNE DILLON, NATHANIEL FENNEL, NATHANIEL FENNEL,
19 KELLY FENNELLY, ANTOINETTE FIEDLER, COREY FOBES, PATRICK A. FREY, HEIDI
20 GABALSKI, DAVID L. GUY, NATHANIEL HOELK, GARRETT HOPKINS, GOREAL
21 HUDSON, DAVID KAIPI, QUIN KAPLAN, SEAN W. LEE, BRIAN HARRINGTON LEWIS,
22 KRISTOPHER MICHAEL MARTINO, MARCEL MATTHEWS, DANUAL MEYERS, JUDE M.
23 MONTOYA, JAMES EDWARD MOREY, JOHN NESMITH, ANDREW W. NEWCOMB,
24 BRANDON F. NEIL, JAMES L. OGDEN, STEVE ORRICO, ANNIE OSTOLASA, RYAN
25 PARKER, TIMOTHY F. PAUDLER, KYLE PHILLIPS, MATTHEW POPELKA, SABRINA
26 PRIESMAN, WILLIAM E. RAINALDO, JR, ALFRED RA'OOF, JAMES REED, DANIELLE
27 RELPH, MATTHEW REITER, ANTHONY ROMEO, CHAD V. RUF, ADAM SHERRILL, MARK
28 SLOMKA, EVAN SOOPER, KIMBERLY S. STRUBLE, REBECCA L. TOBIN, JOHN UDDEN,

1 JASON VALLEY, ADAM L. VEST, CHRISTOPHER VINCENT, MARK WHITE, DAVID WOOD,
2 JOSHUA WOODSON as representatives of the Nationwide FLSA Collective Members.

3 C. A declaratory judgment that the practices complained of herein are unlawful under the Fair
4 Labor Standards Act, 29 U.S.C §§201, *et seq.*

5 D. An injunction against 24 HOUR FITNESS and its officers, agents, successors, employees,
6 representatives, and any and all persons acting in concert with it, as provided by law, from engaging in
7 each of the unlawful practices, policies and patterns set forth herein;

8 E. An award of damages, including liquidated and exemplary damages and waiting time
9 penalties and other statutory penalties to be paid by 24 HOUR FITNESS.

10 F. A declaratory judgment that the arbitration clause purporting to ban or prohibit class
11 actions, class arbitrations, and representative actions on behalf of members of the general public does
12 not apply to a collective action brought by 29 U.S.C. §216(b).

13 G. A declaratory judgment that the arbitration clause at issue is unenforceable.

14 H. A declaratory judgment that the purported ban or prohibition on class actions, class
15 arbitrations, and representative actions on behalf of members of the general public contained in the
16 arbitration clause at issue is unenforceable and/or procedurally and substantively unconscionable and
17 therefore unenforceable.

18 I. A declaratory judgment that the clause contained in the arbitration agreement providing for
19 "each party will equally bear the costs of arbitration" is unenforceable and/or procedurally and
20 substantively unconscionable and therefore unenforceable.

21 J. Costs of action incurred herein, including reasonable attorneys' fees and expert fees;

22 K. Pre-Judgment and post-Judgment interest, as provided by law; and

23 L. Such other and further legal and equitable relief as this Court deems necessary, just and
24 proper.

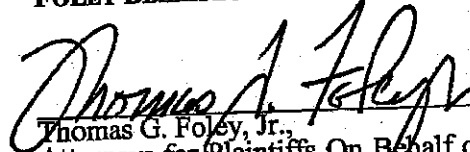
25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to
27 which they have a right to a jury trial.

1 DATED: January 31, 2006

DONAHOO & ASSOCIATES
FOLEY BEZEK BEHLE & CURTIS, LLP

2
3 By


Thomas G. Foley, Jr.,
Attorneys for Plaintiffs On Behalf of Themselves
and All Others Similarly Situated as Specifically
Referenced Herein